

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:)
)
CLERK’S INSTRUCTIONS REGARDING)
CONFIRMATION OF CHAPTER 13)
PLANS AND AMENDED PLANS)
)

CHAPTER 13 CONFIRMATION PROCEDURES

To facilitate the confirmation of Chapter 13 plans, and amended plans, and to inform the bankruptcy bar of the Court’s preferred practices, the Bankruptcy Clerk has promulgated the following, non-binding procedures to assist parties in the Chapter 13 confirmation process.

a. Mailing Matrix & Amended Mailing Matrix

The mailing matrix is a list of all creditors and their addresses. The confirmation process starts with a complete mailing matrix. A creditor without notice of the plan/confirmation hearing is generally not bound by the confirmation of the plan. *E.g.*, 11 U.S.C. § 1327(a) (“The provisions of a confirmed plan bind the debtor and each creditor”); *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1377 (2010) (stating that relief from a confirmation order is appropriate when there exists “a violation of due process that deprives a party of notice or the opportunity to be heard.”); *In re Martin*, 427 B.R. 573, 578 (Bankr. W.D. Va. 2010) (“The preclusion granted by § 1327(a), however, does not apply to a creditor who does not receive notice of the plan such that the creditor’s . . . right to due process of law is violated.”).

1. When Due

The mailing matrix is due with the petition. If it is not filed with the petition, the Clerk issues a notice of deficiency requiring the mailing matrix be filed “immediately” and if not received within 7 days the case is subject to dismissal without further notice. The Clerk’s Office has no way of knowing whether a submitted mailing matrix is full or partial, and even the inclusion of a single creditor’s address will prevent the case from being dismissed for failing to file the matrix. When creditors are added to a mailing matrix after the initial matrix is filed, an amendment fee is charged (\$30 in 2013).

2. Importance of a Complete Mailing Matrix

A Chapter 13 plan is due with the petition, or within 14 days thereafter. When a debtor files a Chapter 13 plan, the Clerk issues and/or mails creditors a notice setting the confirmation hearing on the proposed plan. Attached to the notice of

hearing is the debtor's proposed plan. Attaching the plan to the notice of the confirmation hearing is required by Fed. R. Bankr. P. 3015(d). The Clerk issues the hearing notice nearly contemporaneously with the filing of the proposed plan. Generally, the Bankruptcy Noticing Center (BNC) mails the notice and attached plan to creditors two days after the notice is issued by the Clerk. The BNC mails the notice and plan to the addresses listed on the mailing matrix (as corrected by the BNC to accommodate creditors' registered, preferred addresses).

- A. If a creditor is added to the mailing matrix after the Clerk issues the initial notice of the confirmation hearing with the attached plan, the debtor is responsible for mailing the confirmation hearing notice and the proposed plan to the newly added creditor. The failure of the debtor to accomplish the mailing may result in the creditor not being bound by a subsequently entered confirmation order. This means that the creditor may hold a debt that is not discharged in Chapter 13.
- B. If a debtor amends the mailing matrix and then files an amended Chapter 13 plan, the Clerk's Office will issue a new notice that sets the confirmation hearing and attach the amended plan to the notice. If the Clerk believes that the debtor is filing an amended plan in name only to avoid mailing costs, the Clerk may delegate noticing responsibility of the new confirmation hearing and amended plan to the debtor.

b. The Chapter 13 Plan

1. Model Plan

- A. The Court has adopted a model Chapter 13 plan for the Northern District of West Virginia. The model plan is on the Court's website, www.wvnb.uscourts.gov. From time to time, the Court updates and/or amends the model plan. An old version of the model plan is accepted for 6 months after the date of the most recent amendment.
- B. A debtor's Chapter 13 plan must substantially conform to the model plan adopted by the Court. A debtor may make changes to the plan; provided, however, that any such changes must be in bold font such that the Chapter 13 trustee and the Court are plainly aware that the submitted plan deviates from the model plan. If the debtor is not using the model plan, the debtor must file a motion setting forth why the model plan should not be required in the case.

2. When Due

- A. A Chapter 13 plan should be filed with the Chapter 13 petition. Under Fed. R. Bankr. P. 3015(b), if the plan is not filed with the petition, it “shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown on notice as the court may direct.” In converted cases, the plan is due 14 days after the conversion of the case.
- B. If more than 14 days are needed to file a plan, the debtor should file a motion with the Court detailing how much additional time is needed and the reasons for the delay. Notice of the motion is limited to the debtor, debtor’s counsel, the Chapter 13 trustee and the United States trustee, *i.e.*, parties receiving electronic notice in the case. The Court may grant an extension *ex parte*. Any extension of time granted by the Court is without prejudice to any party moving to dismiss the case or to seek other relief.
- C. This District does not delay issuance of the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditor, & Deadlines until the Chapter 13 plan is filed.

3. Payments & Wage Withholding

- A. The first plan payment is due 30 days after the petition is filed unless the Court enters an order delaying the date of the first plan payment. 11 U.S.C. § 1326(a)(1). The 30-day period does not run from when the plan is filed. Payments should reflect the debtor’s bankruptcy case number and be mailed to the address provided by the Chapter 13 trustee. In 2013 that address is:

Helen M. Morris
P.O. Box 2207
Memphis, TN 38101-2207

- B. Unless the debtor files a motion to allow the debtor to make plan payments directly to the Chapter 13 trustee, or is otherwise exempt from wage withholding, all plan payments are to be made through a wage withholding order. For example, no wage withholding order is required when:
 - i. the debtors income is from sources other than employment;
 - ii. the debtor is self-employed; or
 - iii. the debtor’s income is from social security, pension/retirement, or unemployment.
- C. The Clerk’s Office prepares the wage withholding order based on information contained in the proposed Chapter 13 plan. Debtors and counsel are responsible for ensuring that the employer information is correct, and that the wages of the debtor are sufficient to make the payment. As a general rule, the Clerk’s Office issues the wage withholding order

according to what is listed on page 2 of the model plan. If a debtor desires a particular division of the wage withholding obligation, that division should be reflected in the proposed plan.

- D. The Clerk, Court, and Chapter 13 trustee notice a significantly better success rate, and less work for the Court, Clerk, Chapter 13 trustee, and debtor's counsel when payments are being made pursuant to a wage withholding order. The Court discourages motions to allow direct plan payment when a wage withholding order would otherwise be proper.

c. Service / Notice of the Original Chapter 13 Plan

1. Service

Debtors and/or their counsel are not required to serve the proposed Chapter 13 plan on creditors under Fed. R. Bankr. P. 7004. No service requirement for Chapter 13 plans exist in the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules of this Court.¹ A Chapter 13 plan is not a "motion" as defined by Fed. R. Bankr. P. 9013, and is not subject to the service requirement of Rule 9014(b).

2. Notice

- a. The Clerk (or some other party as the Court may direct) must give at least 28 days notice, by mail, to parties in interest of the time fixed for filing an objection to the hearing to consider confirmation of a Chapter 13 plan. Fed. R. Bankr. P. 2002(b). The Court or the Clerk provides notice of the original confirmation hearing date and attaches the proposed Chapter 13 plan to the hearing notice. Fed. R. Bankr. P. 3015(d).
- b. The minimum 28-day notice of the time fixed for filing an objection to the hearing to consider confirmation of a Chapter 13 plan is on the first page of the Court's model plan. It allows 14 days from the date first set for the § 341 meeting of creditors to file an objection. If the Chapter 13 plan was not filed within 16 days before the § 341 meeting, parties in interest have 28 days from the mailing of the plan to file an objection unless otherwise shortened by the Court.² In nearly all cases, the mailing occurs two days after the Clerk issues the confirmation hearing notice.
- c. When the mailing matrix is amended, the Court enters an Order directing the debtor to mail a copy of: (1) the notice of bankruptcy case, (2) the amended schedules, (3) the notice of the meeting of creditors, (4), the

¹ Proposed Changes to Fed. R. Bankr. P. 3012 will require that proposed chapter 13 plan be "served" under Rule 7004. The proposed changes will be submitted for comment in August 2013.

² A proposed, national Chapter 13 plan would require objections be filed within 7 days of the confirmation hearing.

Chapter 13 plan and the confirmation hearing notice (or a copy of the confirmation order and any approved modification), and (5) any other document that affects the rights of the newly added (or amended) creditor. Consequently, for newly added or amended creditors, the Court has directed the debtor to issue notice of the confirmation hearing date and to attach a copy of the proposed Chapter 13 plan. The debtor should file a certificate of notice with the Clerk.

d. The Confirmation Hearing Date

1. The First Confirmation Hearing Date

- a. The Bankruptcy Code requires that the Court hold a confirmation hearing not earlier than 20 days and not later than 45 days after the date of the meeting of creditors. 11 U.S.C. § 1324(b). This time period runs from when the meeting is concluded, not from the date first set. 8 *Collier on Bankruptcy* ¶ 1324.02 (2012) (“The language of this provision is somewhat unclear, but it should be interpreted as requiring the stated time periods to run from the conclusion of the meeting of creditors, rather than the first date set for the meeting of creditors. When Congress wished a time period to run from the first date set for the meeting of creditors, it so stated. Moreover, interpreting the provision otherwise could result in the confirmation hearing being scheduled before the meeting of creditors is concluded.”).
- b. The date first set for the meeting of creditors for Chapter 13 cases must be scheduled no fewer than 21 and no more than 50 days after the filing of the petition. Fed. R. Bankr. P. 2003(a). A request to continue the scheduled meeting of creditors is made to the Chapter 13 trustee – not the Court or Clerk.
- c. Although the statute appears to require that the confirmation hearing be set after the conclusion of the meeting of creditors – not the date first set – the Clerk has no way of knowing whether the meeting of creditors will be concluded on the date first set, or continued to a different date and then concluded. Therefore, the Clerk sets the initial confirmation hearing based on the date first set for the meeting of creditors. The time for filing objections to the proposed plan is similarly tied to the date first set for the meeting of creditors. The Clerk attempts to set confirmation hearing dates within the 20-45 day period following the date first set for the meeting of creditors as required by 11 U.S.C. § 1324(b). In some cases, however, the confirmation hearing is set beyond the 45-day period due to the Court’s divisional hearing schedule. When the first meeting of creditors is continued, a party in the case is required to move to continue the confirmation hearing such that the confirmation hearing is not held before the meeting of creditors is concluded. The failure to file a motion to

continue may result in an unnecessary Court appearance.

- d. If an objection to confirmation of the proposed plan is timely filed, the Court prefers that a scheduled confirmation hearing not be continued so that it will have the opportunity to adjudicate the objection to confirmation. Generally, with the consent of the party objecting to confirmation, the confirmation hearing may be continued.

2. Plan Objection Deadline

- a. The model plan sets the deadline for objecting to confirmation of the proposed plan. A party (other than the Chapter 13 trustee) has until 14 days after the date first set for the meeting of creditors to file an objection. If less than 28 days exist between the mailing of the proposed plan and this objection deadline, then the creditor has a minimum of 28 days to file an objection to confirmation.³ Objections not filed within this time period are untimely, even if the actual confirmation hearing is continued well past the objection due date. Fed. R. Bankr. P. 3015(f) (stating that an objection to confirmation is due before confirmation); *Oakwood Acceptance Corp. LLC v. Dorn (In re Dorn)*, 315 B.R. 68, 72 (Bankr. E.D. Ark. 2004) (“Rule 3015(f) does not prohibit a local bankruptcy court from establishing a reasonable deadline for the filing of objections, provided that the deadline is before confirmation.”).
- b. Creditors added to a case after the notice of confirmation hearing is issued by the Clerk and before the plan is confirmed must have at least 28 days notice by mail of the set confirmation hearing and have a 28-day objection period following the debtor’s mailing of the confirmation hearing notice and proposed plan to the newly added creditors. If a 28-day period does not exist between the addition of the new creditors and scheduled confirmation hearing, counsel should file a motion to continue the confirmation hearing with the Clerk. The Clerk may sua sponte continue the confirmation hearing. In the alternative, the debtor may file a motion to shorten the 28-day notice period in Fed. R. Bankr. P. 2002(b).

3. Continued Confirmation Hearing Date(s)

- a. Although the first confirmation hearing is “held” in accordance with 11 U.S.C. § § 1324(b) (20-45 days after the meeting of creditors) it is the

³ Twenty-eight days notice by mail is the required time for the allowance of objections to a proposed plan. Fed. R. Bankr. P. 2002(b). The Clerk issues the notice stating the objection period. Electronic filers receive the notice on the day of transmission. Fed. R. Bankr. P. 9036. Notice is complete to non-e filers on mailing. Fed. R. Bankr. P. 9006(e). Because the BNC mails the notice two days after it is issued by the Clerk, at least 30 days must elapse between the issuance of the notice and the objection deadline/confirmation hearing.

general practice in this District not to confirm a Chapter 13 plan until after the governmental claims bar date, which is 180 day following the filing of the petition. Fed. R. Bankr. P. 3002(c)(1). Therefore, although an early confirmation hearing is set by the Clerk, actual confirmation of a plan will not occur, at the earliest, for at least 6 months after the petition is filed.⁴

- b. At a minimum, every Chapter 13 case in this District has two scheduled confirmation hearing dates: a hearing is “held” between 20 and 45 days after the date first set for the meeting of creditors, and a confirmation hearing is also scheduled about 30 days following the governmental claims bar date.
- c. When no party in interest (other than the Chapter 13 trustee) timely files an objection to confirmation within the deadlines set forth in the proposed plan, counsel should move to continue the confirmation hearing past the governmental claim’s bar date to prevent a needless court appearance.
- d. If the confirmation hearing set by the Clerk does not afford parties in interest a period of at least 28 days notice by mail to object to confirmation of the proposed Chapter 13 plan (and no objections are currently pending) then counsel should move to continue the confirmation hearing to the next regularly scheduled court hearing date in the case’s division of origin.
- e. If a party has timely objected to confirmation of a proposed Chapter 13 plan, then the Court prefers that confirmation hearing not be continued (absent consent of the objecting party) to allow the Court to adjudicate the objection.
- f. The Clerk may limit notice of a continued confirmation hearing to the debtor, debtor’s counsel, the United States trustee, the case trustee, any creditor with a timely filed objection. Consequently, when no objections to confirmation are timely filed, the entire creditor body may not be noticed with the continued confirmation hearing date. In addition, because the Clerk has already attached the proposed Chapter 13 plan to the notice of the first confirmation hearing date, the Clerk will not attach the proposed plan to the notice of the continued confirmation hearing date.

4. Confirmation Without a Hearing

If: (a) no party has a pending objection to confirmation of the proposed Chapter 13 plan, (b) the confirmation hearing has been continued past the governmental claims

⁴ Proposed amendments to Fed. R. Bankr. P. 3002 and 3007 alter the proof of claim deadlines and provide that a confirmed plan is binding on a creditor even if a subsequent proof of claim is filed that is different from the creditor’s treatment in the confirmed plan. The Rule changes are out for public comment in August 2013.

bar date, and (c) the Chapter 13 trustee recommends confirmation of the proposed plan, then the Chapter 13 trustee may submit a proposed confirmation order to the Court in advance of the hearing and no appearance is required by counsel or the debtor.

e. Amended Plans

1. Notice / Service

- A. When a debtor files an amended plan, the Clerk issues a new confirmation hearing notice and attaches the amended plan. Fed. R. Bankr. P. 3015(d).⁵ Unless notice is specifically requested to be limited by the debtor, the Clerk's Office generally notices the amended plan to the creditors listed on the mailing matrix.
- B. To limit notice on an amended plan, the debtor should indicate on the first page of the model plan those creditors that are affected by the amendment. The Clerk's Office may limit notice of the confirmation hearing and amended plan to those creditors listed as being affected by the amendment.
- C. No service requirement exists for debtors proposing an amended Chapter 13 plan in the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or the Local Rules of this Court.

2. Objection Deadline to an Amended Plan

- A. A holder of a secured claim that is being treated the same or better in the amended plan, and who did not timely file an objection to the original plan, is deemed to have accepted the amended plan. 11 U.S.C. § 1323(c).
- B. Unlike secured claims provided for in § 1323(c), no similar statute or rule exists to deem an amended Chapter 13 plan accepted by holders of priority or unsecured claims. *Cf.* Fed. R. Bankr. P. 3019 (providing that the failure to object to an original Chapter 11 plan is deemed acceptance of an amended plan that does not affect the unsecured creditor's rights); *with* Fed. R. Bankr. P. 3015 (failing to provide similar language for amended Chapter 13 plans). The Court, however, may deem an amended Chapter 13 plan accepted by an unsecured creditor that failed to object to the original plan so long as the creditor's treatment is the same, or better, in the amended plan.

3. Effect on Previously Filed Plans and Objections

⁵ This is a change from previous practice where the Court tasked debtors with serving the amended plan on adversely affected creditors.

Once an amended Chapter 13 plan is filed by the debtor, all previously filed unconfirmed plans are deemed withdrawn. The filing of an amended plan does not remove any previously filed objection to confirmation; rather, the previously filed objection is deemed to be an objection to the amended plan, and removal of any previously filed objection must be done either by:

- A. Court order,
- B. Having the objecting party withdraw the objection or execute a stipulation that resolves the objection,
- C. Having the Chapter 13 trustee recommend confirmation and stating in the recommendation that the objection is mooted by the amended plan, and/or
- D. Having the Clerk moot the objection based on other developments in the case such as entry of a confirmation order.

4. Cure of Post-Petition, Pre-Confirmation Defaults by Amendment

If a debtor and creditor agree to allow the cure of a post-petition, pre-confirmation arrearage through the Chapter 13 trustee, the resulting increase in the plan payment may be reflected in the confirmation order without the need to file an amended plan – unless the Debtor proposes to reduce payments to existing creditors. Any agreed order to resolve a delinquency that requires action by the Chapter 13 trustee must be sent to the Office of the Chapter 13 trustee for signature. The order must include the exact amount of the post-petition, pre-confirmation arrearage, the amount of the on-going payment, and the address to where payments can be sent by the Trustee. If there is a wage withholding order in effect, the trustee is authorized to submit an amended wage withholding order changing the amount necessary for the payment of the claim.

Updated: March 26, 2013